

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRAVELERS PROPERTY CASUALTY OF
AMERICA,

Plaintiff,

v.

KAUFMAN & BROAD MONTEREY BAY,
INC., et al.,

Defendants.

Case No. [5:13-cv-04745-EJD](#)

**ORDER GRANTING DEFENDANTS'
MOTION FOR CLARIFICATION;
DENYING AS MOOT DEFENDANTS'
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 108

Presently before the Court is Defendants Kaufman & Broad Monterey Bay, Inc., K&B Bakewell Seaside Venture, LLC, and KB Home South Bay, Inc.'s (collectively, "Defendants" or "KB") Motion for Clarification, or alternatively, for Leave to File a Motion for Reconsideration. See Dkt. No. 108. The instant motion pertains to this Court's Order Granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendants' Motion for Partial Summary Judgment ("Order"). See Dkt. No. 107. Having carefully reviewed the matter, the court has determined that a clarification of the order, rather than its reconsideration, is appropriate under these circumstances.

As the parties are aware, the Court examined two specific issues due to the page restrictions on the parties' briefs: whether Plaintiff Travelers Property Casualty of America ("Plaintiff" or "Travelers") provided Defendants an immediate defense and whether Plaintiff provided Defendants a complete defense. See Order at 4. The Court found that Plaintiff did not breach these duties. See id. at 6, 8-9. Thus, insofar that an immediate and complete defense was

1 provided, Plaintiff was entitled to appoint counsel of its choosing. See id. at 9.

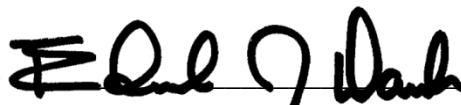
2 The Court, however, did not address the issue of whether Plaintiff breached its duty to
3 defend by failing to provide a conflict-free defense since, as the court explained, “Defendants’
4 motion was reviewed through page 18.” Id. at 4, n.2. Although Defendants may have raised or
5 alluded to the conflict issue in introductory materials,¹ they did not present a developed argument
6 within the briefing reviewed by the Court. Indeed, such argument did not begin until page 19 of
7 their motion, under the heading “Travelers Failed To Provide KB With A Conflict-Free Defense.”
8 See Dkt. No. 54 at 19. Since page 19 fell outside the scope of the Court’s review, the issue of a
9 conflict-free defense was not evaluated.

10 Accordingly, and consistent with the preceding discussion, the Motion for Clarification is
11 GRANTED. The Court clarifies that the issue of whether Plaintiff breached its duty to defend for
12 failing to provide Defendants with a conflict-free defense, and whether Plaintiff’s right to appoint
13 counsel of its choosing was forfeited on that ground, has not been adjudicated and remains a
14 triable issue.

15 With that said, Defendants’ Motion for Leave to File a Motion for Reconsideration is
16 unnecessary and is DENIED AS MOOT.

17
18 **IT IS SO ORDERED.**

19 Dated: February 24, 2015

20 
21 EDWARD J. DAVILA
22 United States District Judge
23
24

25
26 ¹ For example, Defendants wrote that “Travelers breached the insurance contract by breaching its
27 duty to provide KB with a conflict-free defense of the Davis Action” in page 1 of the motion, but
28 that is all.